not teach or suggest using an image database search for purchasing items that meet specified criteria as claimed. With all due respect, Hess teaches nothing about this feature, either.

Crill shows that searching an image database for images is known in the art. Crill taught nothing about the specific claimed techniques of using an image database search for "purchasing of items of which meet criteria specified in said image information" (claim 1) or other limitations including price information as defined by claims 10 and 17. Crill says not one word about using this technique for finding items to be purchased. Hess does show that database searches can return results. However, Hess teaches nothing about carrying out that database search using image-based techniques.

The previous rejection simply alleged, with no evidence, that using Crill's technique with items to be purchased would be obvious. Now, after an appeals conference, however, the rejection takes a new tactic. The rejection now admits that Crill fails to teach a server for items to be purchased, but states that "these limitations are well-known in the art". There is no evidence to support this statement. The rejection cites Hess – an Ebay patent that shows the use of thumbnails in returned search results.

First of all, there is no incentive to combine these references, other than the bald and unsupported statement that it would have been obvious for a person having ordinary skill in the art to combine Crill and Hess "the in order to allow prospective purchase to make a more informed decision". (sic). This proposed "reason" is nonsense, since the claimed subject matter is about searching for

items to buy, and has nothing to do with any kind of "informed decision". In fact, Hess itself shows the unobviousness of this combination. Hess explains how difficult it would be to individually select items to view their images. Instead, Hess suggests forming a thumbnail of the original image of the item, and including that as part of the summary listing that is returned as search results. See generally column 3 lines 35-47.

Hess does not discuss how one does searching for the items, in any detail. The searching is summarily described for example column 4, lines 28-38. The point of Hess is to return thumbnails as part of the search results. This is wholly different than the claimed technique of searching image databases. Hess teaches nothing about searching the database of images, but only teaches returning thumbnail images.. Hess describes different features including item maintenance (column 6) item registration (column 7) image harvesting, (column 7-9), item presentation (column 9), gallery presentation format and thumb database access(columns 9-10). Nowhere is there any teaching or suggestion of the claimed feature requiring "using said image information to search said database associated with the server for items to be purchased which meet criteria specified in said image information".

In fact, the hypothetical combination of Crill with Hess would simply teach a Crill type system, along with Hess's teaching that one should return image thumbnails as part of the search. Since there is nothing teaching or suggesting any kind of image database searching in Hess, there certainly is no teaching or suggestion to modify Crill for "using said image information to search said

database associated with the server for items to be purchased which meet criteria specified in said image information".

Even if, hypothetically, Hess did teach such a system, it would be entirely hindsight to use Crill's techniques with any product sales feature. The present claims, like claim 1, allow defining image information, and searching a database using the image information for items to be purchased. As described in the specification, this produces significant advantages, including ways to find items even when the prospective purchaser does not know the right kinds of words to describe those items. Nothing in the prior art teaches this technique.

Crill has not one word about using his image searching feature to look for "items to be purchased which meet criteria specified in said image information".

Hess teaches not one word about searching the database using image information for such items to be purchased. Logically then, since neither reference teaches this, the hypothetical combination cannot teach this feature. There is not one word in the prior art about using image information to search a database associated with the server for items to be purchased which meet criteria specified in said image information.

Since this is not suggested by the prior art, quite clearly it is <u>patentable</u> over that prior art. The rejection is based wholly on hindsight, on teachings gleaned from the present specification, and the rejection does not properly rely on the scope and contents of the prior art. Moreover, the claimed technique has the advantage of allowing finding items to be purchased that are not easily susceptible of being described any other way.

Consider the advantage of the present system. Claim 1 can be used, for example, to allow a user to obtain an image of something they want, without knowing the name of that thing. They can use an image to search a database for items which look like that image. In this way, the user may be able to find items on a website, without knowing the name of those items. This application is possible using the system of claim 1. It is nowhere taught or suggested, however, by Crill in view of Hess.

For all of these reasons, it is respectfully suggested that Crill/Hess does not fairly suggest the limitations noted above from claim 1. Claim 1 should therefore be allowable along with the claims that depend therefrom.

Each and every one of the dependent claims should be independently allowable.

Claim 3 (and others) defines exclusion information to exclude from the search results. The rejection reads this on Crill's cropping, and the rejection states that "cropping is the same as excluding information from an image". See item 24 on page 8. However, this emphasizes the difference. The claimed exclusion information is exclusion information to exclude from the search results. Crill teaches excluding from the image, not excluding from the search results. Hess teaches not one word about search results. Cropping the image is entirely different from forming exclusion information "to exclude from the search results". Claim 3 should hence be additionally allowable.

Claim 4 specifies selecting a more important image portion and weighting the search results according to that more important image portion. Crill /

Hess/Jain does teach masking to form a part of the image. However, claim 4 requires weighting the search results according to the more important image portion. The exclusion which is done by Crill's masking would not do any weighting, it would do entirely exclusion.

Claim 9 incorporates the price information. Nothing in Crill / Hess teaches anything about this searching with price information. This further emphasizes the distinctions over Crill / Hess which says not one word about price information. This feature is not remotely suggested by Crill. The contention is based on hindsight. Nothing in Crill teaches anything about price information.

Claim 10 defines entering image information, using the image information to search database information, and returning search results including price information associated with items in the search result. Crill /Hess is entirely devoid of any such thing. Crill / Hess teaches nothing about returning price information as part of the search result.

Claim 12 should be allowable for analogous reasons to those discussed above with respect to claim 4. Claim 13 should be allowable for similar reasons to those of claim 3.

Claim 17 defines a computer that searches a database that includes price information and returns search results that match the searching image information and price information. As stated above, this feature, including search results with "price information" is not taught or suggested by the cited Crill / Hess prior art. With all due respect, This rejection, is based entirely on hindsight.

It is believed that all of the pending claims have been addressed in this

paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper, and the amendment of any claim does not necessarily signify concession of unpatentability of the claim prior to its amendment.

Respectfully submitted,

Date: _9/13/06_____   __/Scott C Harris/____
Scott C. Harris
Reg. No. 32,030

Customer No. 23844
Scott C. Harris, Esq.
P.O. Box 927649
San Diego, CA 92192
Telephone: (619) 823-7778
Facsimile: (858) 678-5082